

3363(-) - Adequate Protection
Movement of Collateral out of Country.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:

JOEL ALLEN BELCHE
LORRIE P. BELCHE

Debtors

MARINE MIDLAND AUTOMOTIVE
FINANCIAL CORPORATION

Movant

v.

JOEL ALLEN BELCHE
and
SYLVIA FORD DRAYTON, TRUSTEE

Respondents

Chapter 13 Case

Number 88-41240

FILED

at 12 O'clock 57 - 12 M

Date 12/12/89

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia P03

MEMORANDUM AND ORDER

On October 18, 1989, a hearing was held upon a Motion for Relief from Stay filed by Marine Midland Automotive Financial Corporation ("Midland") on grounds of lack of adequate protection as the Debtors intend to transport Midland's collateral out of the country. Upon consideration of the evidence adduced at trial and

the briefs submitted by the parties and the Chapter 13 Trustee I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtors filed for bankruptcy relief under 11 U.S.C. Chapter 13 on November 9, 1988. Midland is a secured creditor by virtue of a purchase money security interest in the Debtors' vehicle, a 1988 Mercury Tracer, which is presently insured. Midland filed a proof of claim in the case in the amount of \$10,893.29 and estimated the value of the collateral to be \$6,937.50. Debtors' plan was confirmed on April 28, 1989, and Midland's claim was allowed. Midland has received regular payments from the Chapter 13 Trustee under the plan.

The Debtor Husband is on active duty with the United States Army and has received orders to report to Germany in January, 1990. Debtor Wife and their child are to join him in Germany in March, 1990. Debtors wish to take Midland's collateral, the 1988 Mercury Tracer, to Germany with them. Midland has objected to this use of the collateral and has filed a Motion for Relief from Stay pleading a lack of adequate protection. There is no contractual prohibition against movement of the collateral out of the country. Debtors are current in their payments into the plan and the plan was confirmed without objection.

CONCLUSIONS OF LAW

Movant has cited Georgia law O.C.G.A. Section 44-14-7 for the proposition that it is unlawful for any person to remove a motor vehicle from this state, after having given a security interest in the vehicle, without the consent of the holder of the security interest. This interpretation is erroneous as it completely leaves out the intent element of that statute. It is illegal for the debtor to remove collateral from Georgia only if the "removal is without the consent of and with the intent to defraud the holder of the security instrument". No intent to defraud Midland has been established in this matter. Therefore, Midland has no right under state law to object to the removal of the vehicle.

Midland further argues that under 11 U.S.C. Section 363(e), the Court shall prohibit the use of this collateral or condition the use of this collateral on the existence of adequate protection of the creditor's interest and that the removal of the vehicle from the country will result in the loss of adequate protection for Midland due the impracticalities of repossession of the collateral in the event of default. However, forcing the Debtor to surrender this automobile as a form of adequate protection in this situation will put Midland in better position than it would hold but for the bankruptcy. That is not the purpose of the

adequate protection concept. See, e.g., In re Smithfield Estates, Inc., 48 B.R. 910, 915 (Bankr. D.R.I. 1985) ("The concept of adequate protection was not designed or intended to place an undersecured or minimally secured creditor in a better post-filing position than it was in before the stay."); In re Planned Systems, Inc., 78 B.R. 852 (Bankr. S.D. Ohio 1987) (quoting Smithfield, supra.) 11 U.S.C. Section 361 provides in relevant part:

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by--

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

At confirmation this Court made a determination that Movant's rights were adequately protected by virtue of the periodic payments being made by the Debtor to the Chapter 13 Trustee which, in turn, are being disbursed to Midland and others. Debtors have performed their obligations to the Trustee in satisfactory fashion and there is no evidence to suggest that they will not do so in the future. Thus I conclude that Midland is adequately protected notwithstanding Debtors' proposed removal of the automobile to Germany.

Thus since I find no contractual prohibition against the movement of the collateral out of the country, no state law prohibition against the same, and no prohibition in the Bankruptcy Code, Midland's motion is denied.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Motion for Relief from Stay filed by Marine Midland Automotive Financial Corporation is denied.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 5th day of December, 1989.